SUPREME COURT OF THE UNITED STATES

ARKANSAS *v.* KENNETH ANDREW SULLIVAN

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

No. 00–262. Decided May 29, 2001

JUSTICE GINSBURG, with whom JUSTICE STEVENS, JUSTICE O'CONNOR, and JUSTICE BREYER join, concurring.

The Arkansas Supreme Court was moved by a concern rooted in the Fourth Amendment. Validating Kenneth Sullivan's arrest, the Arkansas court feared, would accord police officers disturbing discretion to intrude on individuals' liberty and privacy. See 340 Ark. 318–A, 318–B, 16 S. W. 3d 551, 552 (2000) (expressing unwillingness "to sanction conduct where a police officer can trail a targeted vehicle with a driver merely suspected of criminal activity, wait for the driver to exceed the speed limit by one mile per hour, arrest the driver for speeding, and conduct a full-blown inventory search of the vehicle with impunity"). But this Court has held that such exercises of official discretion are unlimited by the Fourth Amendment. See *Atwater* v. *Lago Vista*, 532 U. S. ___ (2001); *Whren* v. *United States*, 517 U. S. 806 (1996). Given the Court's current case law, I join the Court's opinion.

In *Atwater*, which recognized no constitutional limitation on arrest for a fine-only misdemeanor offense, this Court relied in part on a perceived "dearth of horribles demanding redress." 532 U. S., at ___ (slip op., at 32). Although I joined a dissenting opinion questioning the relevance of the Court's conclusion on that score, see *id.*, at __ (slip op., at 13–14) (O'CONNOR, J., dissenting), I hope the Court's perception proves correct. But if it does not, if experience demonstrates "anything like an epidemic of unnecessary minor-offense arrests," *id.*, at __ (slip op., at 33) (opinion of the Court), I hope the Court will reconsider

its recent precedent. See *Vasquez* v. *Hillery*, 474 U. S. 254, 266 (1986) (observing that Court has departed from *stare decisis* when necessary "to bring its opinions into agreement with experience and with facts newly ascertained") (quoting *Burnet* v. *Coronado Oil & Gas Co.*, 285 U. S. 393, 412 (1932) (Brandeis, J., dissenting)).